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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC  
COMPANY,

Debtors.

- ☒ Affects Both Debtors  
☐ Affects PG&E Corporation  
☐ Affects Pacific Gas and Electric Company

Case No. 19-30088 (DM) (Lead Case)  
Chapter 11  
(Jointly Administered)

**PERA'S MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT OF  
MOTION FOR APPOINTMENT AS LEAD  
PLAINTIFF AND APPROVAL OF  
SELECTION OF LEAD COUNSEL**

Date: January 9, 2024  
Time: 10:00 a.m. (PT)  
Before: (Telephonic Appearances Only)  
United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, California 94102

**Objection Deadline:** December 26, 2023, 4:00  
PM (PT)

1 Claimant Public Employees Retirement Association of New Mexico (“PERA”), the court-  
2 appointed lead plaintiff in the securities class action captioned as *In re PG&E Corporation*  
3 *Securities Litigation*, Case No. 18-03509 (the “**Securities Action**”) pending in the U.S. District  
4 Court for the Northern District of California, hereby submits this motion (the “**Motion**”) for entry  
5 of an order, pursuant to this Court’s prior determination to apply Rule 7023 to the Proposed Class  
6 (defined below) in the Chapter 11 Cases (defined below), 11 U.S.C. § 105(a), and Rule 9014(a) and  
7 (c) of the Federal Rules of Bankruptcy Procedure, substantially in the form submitted herewith as

8 **Exhibit C:**

- 9 • Appointing PERA as Lead Plaintiff to represent the Proposed Class in these Chapter 11  
10 proceedings (the “**Chapter 11 Cases**”)<sup>1</sup>; and
- 11 • Approving PERA’s selection of counsel, Labaton Sucharow LLP (“**Labaton**”), as Lead  
12 Counsel.<sup>2</sup>

13 **INTRODUCTION**

14 Now that the Court has determined that Rule 23 should apply, a lead plaintiff should be  
15 appointed to protect the interests of the Proposed Class.<sup>3</sup>

16 In its oral ruling granting PERA’s motion, this Court already determined that PERA has  
17 made at least a *prima facie* showing that Rule 23(a) is satisfied. Sept. 12, 2023 Hr’g Tr. at 8:11–19  
18 (“It does appear to me, on the face of PERA’s motion, that at least the prerequisites of Rule 7023(a)  
19 will be satisfied.”).

20 Accordingly, PERA respectfully requests that the Court appoint it as Lead Plaintiff and  
21 approve its selection of Labaton as Lead Counsel.

22 <sup>1</sup> The proposed class includes all securities claimants with unresolved Rescission or Damage Claims  
23 classified as Classes 9A, 10A-II, and 10B (the “**Securities Claimants**” and their claims the  
24 “**Securities Claims**”) who purchased or otherwise acquired the publicly traded debt or equity  
25 securities of PG&E Corporation, Pacific Gas and Electric Company, or both, from April 29, 2015  
through November 15, 2018 (inclusive), and who timely submitted Securities Claims (the “**Proposed**  
**Class**”).

26 <sup>2</sup> See FRCP 23(g)(3) (“The court may designate interim counsel to act on behalf of a putative class  
27 before determining whether to certify the action as a class action.”).

28 <sup>3</sup> Herein, “[a]ll discussion about FRCP 23 and FRBP 7023 will be referred to as ‘Rule 23.’” *Teran v.*  
*Navient Solutions, LLC (In re Teran)*, 649 B.R. 794, 800 n.2 (Bankr. N.D. Cal. 2023).

## ARGUMENT

The adequacy and typicality requirements of Rule 23(a) “focus on the desired attributes of the class’s representative.” 1 Newberg & Rubenstein on Class Actions § 3:28 (6th ed. Nov. 2023 Update). As set forth below, the Court already determined that PERA and Labaton satisfy these requirements.<sup>4</sup>

### **A. The Court Already Determined that Typicality Is Satisfied**

Under Rule 23(a)(3)’s “permissive standards” for typicality, “representative claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they need not be substantially identical.” *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same conduct.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011).

Here, the Court already determined that PERA has satisfied the typicality requirement. Sept. 12, 2023 Hr’g Tr. at 10:16-19 (“As to whether the claims or defenses of the representative parties are typical of the claims, I also agree that [PERA’s] share the same question of law and fact, common to the class.”). Moreover, the proof of claim form approved by this Court on February 27, 2020 for Securities Claims has as its bases the structure and allegations of PERA’s class action complaint. *See* ECF Nos. 5943, 5943-3.<sup>5</sup>

Since the claims that PERA asserts are based on the same legal theories and arise “from the same event or practice or course of conduct that gives rise to the claims of other class members,”

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<sup>4</sup> The other two Rule 23(a) requirements, numerosity and commonality, “identify the characteristics of a class that make representative litigation appropriate, namely that many individuals share common legal or factual questions.” 1 Newberg & Rubenstein on Class Actions § 3:28 (6th ed. Nov. 2023 Update). The Court also determined those requirements are satisfied here. *See* Sept. 12, 2023 Hr’g Tr. at 9:7-9 (“As to numerosity, I agree that the number of claimants in the proposed class is so numerous that joinder of the members would be impractical.”); *id.* at 10:1-2 (“As to commonality, I agree that this element appears satisfied.”).

<sup>5</sup> Exhibit D submitted herewith lists the 27 Securities Claimants of which PERA is aware that affirmatively adopted PERA’s class action complaint pursuant to the Court’s Order Authorizing Amendment and Objection Procedures for Securities Claims. *See* ECF No. 13934; ECF No. 13934-1 ¶4. PERA and Labaton do not seek to represent the Securities Claimants represented by Rolnick Kramer Sadighi LLP or any other Securities Claimants that have retained their own counsel and seek to proceed individually with respect to their Securities Claim.

1 typicality is satisfied. *See* 1 Newberg & Rubenstein On Class Actions § 3:29 (6th ed. Nov. 2023  
2 Update); *see also id.* (“The test for typicality is not demanding.”).

3 **B. The Court Already Determined that Adequacy Is Satisfied**

4 Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the  
5 interests of the class.” Fed. R. Civ. P. 23(a)(4). The test for adequacy of representation for the class  
6 is two-pronged: “(1) do the named plaintiffs and their counsel have any conflicts of interest with  
7 other class members and (2) will the named plaintiffs and their counsel prosecute the action  
8 vigorously on behalf of the class?” *Ellis*, 657 F.3d at 985.

9 Here, the Court already determined that PERA and Labaton “will adequately represent the  
10 class.” Sept. 12, 2023 Hr’g Tr. at 10:24–25; *see also id.* at 11:1–4.

11 PERA has the sophistication and resources to effectively litigate this matter and supervise  
12 counsel. PERA was established in 1947 and manages a retirement system for state, county, and  
13 municipal employees including police, firefighters, judges, magistrates, legislators and volunteer  
14 firefighters. PERA oversees assets of \$16.7 billion on behalf of its members, retirees, and  
15 beneficiaries. PERA understands the fiduciary duties attendant upon a lead plaintiff and is willing to  
16 provide testimony at deposition and trial, if necessary.

17 Labaton is highly-qualified, with significant experience in prosecuting securities class  
18 actions and has excelled as lead counsel in numerous landmark securities class actions throughout  
19 the United States on behalf of defrauded investors. For example, Labaton served as a lead counsel  
20 in *In re American International Group, Inc. Securities Litigation*, No. 04-cv-8141 (S.D.N.Y.), in  
21 which it achieved a recovery totaling more than \$1 billion for injured investors. *See also In re*  
22 *Countrywide Fin. Corp. Sec. Litig.*, No. 07-cv-5295 (C.D. Cal.) (\$624 million recovery); *In re Bear*  
23 *Stearns Cos., Inc. Secs., Derivative, & ERISA Litig.*, No. 08-md-1963 (S.D.N.Y.) (\$294.9 million  
24 recovery). Furthermore, Labaton has retained the qualified, experienced, and capable bankruptcy  
25 counsel of Lowenstein Sandler LLP, whose expertise is well known to this Court.<sup>6</sup>

26 \_\_\_\_\_  
27 <sup>6</sup> In addition, the Proposed Order provides that Lead Counsel may associate with additional counsel,  
28 such as bankruptcy counsel, counsel for special groups of Securities Claimants, as well as other  
specialized counsel.

1 As the Court is aware, PERA and Labaton have demonstrated their willingness and ability to  
2 serve as Lead Plaintiff and Lead Counsel on behalf of the Proposed Class in these Chapter 11 Cases  
3 since their commencement, through plan confirmation and throughout the post-confirmation period  
4 to date. Indeed, PERA, through its counsel, has already been determined to have made a substantial  
5 contribution to the Chapter 11 Cases. PERA's and Labaton's substantial involvement demonstrates  
6 they have been and continue to be willing to commit considerable resources to representing the  
7 interests of the Proposed Class. Moreover, the District Court has already determined that the  
8 appointment of PERA and Labaton as its counsel was appropriate in the Securities Actions. There is  
9 no reason to doubt they will continue to do so on behalf of the Proposed Class.

10 Thus, adequacy is also satisfied.

11 **CONCLUSION**

12 For the foregoing reasons, the Court should appoint PERA as Lead Plaintiff and approve  
13 PERA's selection of Labaton as Lead Counsel.

14 Dated: December 8, 2023

15 Respectfully submitted,

16 **LABATON SUCHAROW LLP**

17 By: /s/ Thomas A. Dubbs  
18 Thomas A. Dubbs (*pro hac vice*)  
19 Lead Counsel to Securities Lead  
Plaintiff and the Class

20 - and -

21 **MICHELSON LAW GROUP**

22 Local Bankruptcy Counsel to Securities Lead  
23 Plaintiff and the Class

24 - and -

25 **LOWENSTEIN SANDLER LLP**

26 Special Bankruptcy Counsel to Securities Lead  
27 Plaintiff and the Class

28 - and -

**WAGSTAFFE, VON LOEWENFELDT, BUSCH  
& RADWICK, LLP**

*Liaison Counsel for the Class*

- and -

**ROBBINS GELLER RUDMAN & DOWD LLP**

*Counsel for the Securities Act Plaintiffs*

- and -

**VANOVERBEKE, MICHAUD & TIMMONY,  
P.C.**

*Additional Counsel for the Securities Act Plaintiffs*